

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 99-50003

v.

HONORABLE PAUL V. GADOLA  
U.S. DISTRICT JUDGE

THOMAS L. DAVIS,

Defendant.

**ORDER TRANSFERRING MOTION TO THE COURT OF APPEALS**

Now before the Court is Defendant Thomas L. Davis' "Motion to Modify Term of Imprisonment," filed January 2, 2008. The exact nature of Petitioner's motion is unclear. Petitioner makes reference to his sentence being improper, pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005). Petitioner also states that he seeks to have good time credit subtracted from his prison sentence and that he desires to serve a portion of his sentence in a halfway house near his family.

Petitioner has previously filed motions to vacate his sentence, pursuant to 28 U.S.C. § 2255. In 2002, Petitioner filed a § 2255 motion which was denied by this Court on April 29, 2002. Petitioner then filed another § 2255 motion on January 18, 2005, arguing that his sentence was unconstitutional and that he should be allowed to serve his sentence in a halfway house. The Court transferred that motion to the Court of Appeals for the Sixth Circuit as a second or successive petition for a writ of habeas corpus. *See* 28 U.S.C. § 2244.

Petitioner's new motion raises issues very similar, if not identical, to those raised in his 2005 motion. In any event, the present motion requests relief that this Court cannot grant. His motion,

although entitled as one to amend his sentence, is in fact, a second or successive petition for a writ of habeas corpus. *See e.g., United States v. Carter*, 500 F.3d 486, 490-91(6th Cir. 2007)(a motion seeking to amend a sentence pursuant to *Booker* must be construed as a motion pursuant to § 2255). Therefore, the Court will transfer the present motion, construed as a second or successive petition for a writ of habeas corpus, to the Court of Appeals. *See* 28 U.S.C. § 2244.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Petitioner's motion entitled, "Motion to Modify Term of Imprisonment" [docket entry #98], filed on January 2, 2008, and construed by this Court as a second or successive motion for a writ of habeas corpus pursuant to 28 U.S.C. § 2255, shall be **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for the necessary certification under 28 U.S.C. § 2244.

**SO ORDERED.**

Dated: January 7, 2008

s/Paul V. Gadola  
HONORABLE PAUL V. GADOLA  
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on 1/8/2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Mark Jones, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Thomas Davis.

s/Ruth A. Brissaud  
Ruth A. Brissaud, Case Manager  
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